

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Criminal Case No. 08-20461

Frank Eugene Armstrong,

Honorable Sean F. Cox

Defendant.

ORDER DISMISSING § 2255 MOTION WITHOUT PREJUDICE

In this action, Defendant Frank Eugene Armstrong (“Armstrong”) was charged with sexual exploitation of children in violation of 18 U.S.C. § 2251 (Count I) and possession of child pornography in violation of 18 U.S.C. § 2252A (Count II).

Armstrong has been represented by attorney Daniel Van Norman since October 10, 2008. Following a jury trial, Armstrong was convicted of both counts on January 21, 2009. Armstrong is scheduled to be sentenced by this Court on August 14, 2009.

On June 12, 2009, Mr. Van Norman filed a motion seeking to withdraw as counsel. (Docket Entry No. 23). The Court has not yet ruled on that motion and, therefore, Mr. Van Norman remains as counsel for Armstrong.

Nevertheless, on June 12, 2009, purporting to act *pro se*, Armstrong filed a “Motion for Relief of Judgment 28 U.S.C. § 2255.” (Docket Entry No. 24).

Under 28 U.S.C. § 2255, a “prisoner in custody under sentence of a [federal] court . . . claiming the right to be released . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence.” 28 U.S.C. § 2255.

The Court shall dismiss Armstrong’s § 2255 motion without prejudice for two reasons.

First, Armstrong is still represented by counsel and therefore Armstrong must file all motions through counsel. Second, Armstrong's motion under § 2255 is premature as Armstrong has not yet been sentenced by this Court.

Accordingly, **IT IS ORDERED** that Armstrong's § 2255 Motion is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: June 25, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 25, 2009, by electronic mail and upon Frank Armstrong via First Class Mail at the address below:

Frank Armstrong #809644
Genesee County Jail
1002 S. Saginaw Street
Flint, MI 48502

S/J Hernandez

Case Manager